
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Insolvency (Scotland) Rules 1986 (S.I. 1986/1915) (“the Rules”) and the Receivers (Scotland) Regulations 1986 (S.I. 1986/1917) (“the Regulations”) in consequence of the introduction of a share of assets for unsecured creditors known as the “prescribed part” by section 176A of the Insolvency Act 1986 (c. 45) (“the 1986 Act”), as inserted by section 252 of the Enterprise Act 2002 (c. 40). These amendments concern the provision of information for creditors, the powers for receivers to deal with the prescribed part and applications to disapply the prescribed part.

Part 1 of the Order amends the Rules. Article 3 inserts a definition of “prescribed part”. Articles 4, 6 and 9 insert new provision for the directors, liquidator or administrator (as the case may be) to provide the creditors with an estimate of the value of the prescribed part and of the company’s net property; whether or not the Insolvency Practitioner proposes to apply to the court under section 176A(5) of the 1986 Act for section 176A(2) to be disapplied; and to report to the creditors the amount paid, if any, to unsecured creditors by virtue of the application of section 176A. Article 5 inserts a provision governing the disposal of the prescribed part by a receiver. Article 7 inserts provisions of general application governing the making of applications under section 176A(5) and the notification of orders made under that section. Article 8 amends Rule 7.31 (fees, expenses, etc) to providing that the fees, costs, charges and other expenses associated with the prescribed part shall be met out of the prescribed part. Article 10 inserts into Schedule 5 of the Rules a new Form 4.31 (Scot) (Notice in respect of order under section 176A), and substitutes a new page for page 2 of the existing Form 4.4 (Scot).

Part 2 of the Order amends the Regulations. Article 11 inserts provision for the receiver to provide creditors with an estimate of the value of the prescribed part and of the company’s net property, and to state whether (and, if so, why) he intends to apply to the court under section 176A(5) of the 1986 Act for section 176A(2) to be disapplied. Article 11(2) substitutes a new page for page 2 of the existing Form 5 (Scot) as set out in the Schedule to the Regulations.